HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, April 17, 2017
85th Legislature, Number 51
The House convenes at 2 p.m.

Dwayne Bohac
Chairman
85(R) - 51

SUBJECT: Penalties for misusing official information resulting in pecuniary gain

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 7 ayes — S. Davis, Moody, Capriglione, Nevárez, Price, Shine, Turner

0 nays

WITNESSES: None

BACKGROUND: Penal Code, sec. 39.06 makes it a crime to misuse official information. Public servants commit the offense if they use non-public information to which they have access because of their office or employment to:

- acquire or help another acquire a pecuniary interest in a property, transaction, or enterprise that may be affected by the information;
- speculate or aid another in speculation on the basis of the information; or
- as a public servant, coerce another into suppressing or failing to report information to a law enforcement agency.

It also is an offense for a public servant to disclose or use non-public information for a non-governmental purpose if the information was gained because of the public servant's office or employment and if the disclosure was done with the intent to obtain a benefit or to harm or defraud another. Persons can commit the crime by soliciting or receiving from a public servant this type of information if done with intent to obtain a benefit or intent to harm or defraud another.

An offense is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000), except that a public servant coercing someone into suppressing or failing to report certain information to a law enforcement agency is a class C misdemeanor (maximum fine of $500).

DIGEST: CSHB 1090 would impose graduated penalties ranging from third-degree felony to first-degree felony for certain types of misuse of official information. The penalties would apply to offenses that resulted in a net

pecuniary gain to the person committing the offense and would be based on based on the amount of the gain.

An offense would be a third-degree felony if the gain was less than $150,000, a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the gain was at least $150,000 but less than $300,000, and a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the gain was $300,000 or more.

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 1090 would strengthen laws on the misuse of information to more accurately make the punishment fit the crime when a public servant realizes gain from using inside information. It is a violation of the public trust for public officials to use information gained in the course of their office or job for their own financial benefit, and these offenses need to be taken seriously with penalties that increase as the amount of gain increases.

The highest penalty for the offense available under current law is a third-degree felony, no matter how much the pecuniary gain. CSHB 1090 would establish graduated penalties to make potential punishments proportional to the crime by scaling up punishments as the amount of gain increased. This would serve as a deterrent to public servants who might use their positions of public trust for financial gain and appropriately would punish those who did. The graduated penalties established by the bill would impose punishments similar to those for other financial crimes and would track the standard value ladder used to determine punishments for numerous other crimes.

Prosecutors and courts would retain discretion to handle these cases appropriately and to impose fitting penalties, including a range of prison terms within each felony level, probation, and restitution. CSHB 1090 would not change the base level of punishments for the crime, but its severity makes it appropriate that the penalty range start at a third-degree felony.

CSHB 1090 would not significantly impact the demand for state correctional resources. In fiscal 2016, fewer than 10 people were arrested for misuse of official information punishable as a third-degree felony, according to the Legislative Budget Board's criminal justice impact statement.

OPPONENTS SAY:

While misusing inside information by public servants and others is a serious crime, current law appropriately sets the punishment at a third-degree felony, which can result in two to 10 years in prison. Enhancing certain offenses to a first- or second-degree felony could go too far in allowing potentially lengthy sentences of up to 99 years. Long prison terms can make it difficult to recover restitution from offenders, something victims often request. Under current law, offenders may be punished appropriately, including with probation or a shorter incarceration term, which can allow the offender to return to work and pay restitution.

OTHER OPPONENTS SAY:

If a value ladder is going to be imposed on crimes involving the misuse of information for pecuniary gain, it might be best to impose a ladder on all offenses and begin with misdemeanor or state jail punishments for offenses resulting in lower amounts of pecuniary gain, rather starting at the third-degree felony level.

NOTES:

The committee substitute raised the amount of net pecuniary gain that would be associated with each penalty.

A companion bill, SB 140 by V. Taylor, was referred to the Senate Committee on State Affairs on January 25.

SUBJECT: Allowing a student's visit to a military recruiter to be an excused absence

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Dutton, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

WITNESSES: For — (*Registered, but did not testify*: Mike Motheral, Small Rural School Finance Coalition; Dwight Harris and Ted Melina Raab, Texas AFT (American Federation of Teachers); Courtney Boswell and Houston Tower, Texas Aspires; Miranda Goodsheller, Texas Association of Business; Barry Haenisch, Texas Association of Community Schools; Amy Beneski, Texas Association of School Administrators; Mark Terry, Texas Elementary Principals and Supervisors Association; Ellen Arnold, Texas PTA; Colby Nichols, Texas Rural Education Association; Portia Bosse, Texas State Teachers Association; Kimberly Saldivar)

Against — (*Registered, but did not testify*: Katija Gruene, Green Party of Texas; Jaime Puente, Texas Graduate Student Diversity)

On — (*Registered, but did not testify*: Von Byer and Eric Marin, Texas Education Agency)

DIGEST: HB 1270 would allow a school district to consider a student's visit to a military recruitment center an excused absence for the purpose of determining the student's interest in enlisting in a branch of the U.S. armed forces. The bill would allow the district to excuse a junior or senior in high school for up to two days per school year for this purpose. The district would adopt a policy to determine when an absence would be excused and a procedure to verify the student's visit to the recruitment center.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 school year.

SUPPORTERS SAY:

HB 1270 would allow high school students to explore careers in the military without being penalized with an unexcused absence. A visit to a military recruitment center can be an important step in making a major life choice, and the bill reasonably would allow school districts to excuse up to two absences per year for this purpose.

Not all students will enter college after high school, and districts should accommodate students exploring other options in the same way they accommodate those bound for college. Campus visits may be considered excused absences, and visits to military recruitment centers should be treated no differently.

Students in rural areas often must drive long distances and miss school to visit a recruitment center during normal business hours. Since it is not possible in some cases to avoid missing a half day or full day of school to visit a military recruitment center, districts should allow these visits to be excused.

A junior or senior visiting a military recruitment center is making a voluntary choice to gain more information about a possible option after high school. In excusing a high school student's absence for this purpose, the school district would not be encouraging a particular choice — it simply would be allowing students to make their own decisions without penalizing them.

OPPONENTS SAY:

Texas public schools should not facilitate efforts of military recruiters in targeting teenagers, especially low-income students who may view military service as a way out of poverty without a full understanding of the effect several years of enlistment could have on their lives.

NOTES:

A companion bill, SB 614 by Seliger, was referred to the Senate Committee on Veteran Affairs and Border Security on February 13.

SUBJECT: Extending state death benefits to survivors of certain peace officers

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — P. King, Nevárez, Burns, Hinojosa, Holland, J. Johnson, Metcalf, Schaefer, Wray

0 nays

WITNESSES: For — Paul Cordova, Rice University Police Department; Shane Sexton, St. Edward's University Police Department; Richard Shafer, Texas Association of College and University Police Administrators, Southern Methodist University; Steve McGee, Texas Christian University; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Ray Martinez, Independent Colleges and Universities of Texas (ICUT); Micah Harmon and AJ Louderback, Sheriffs' Association of Texas; Mitch Landry, Texas Municipal Police Association (TMPA); James McLaughlin, Texas Police Chiefs Association; Gary Sargent, University of Mary Hardin-Baylor Police Department; Thomas Parkinson)

Against — None

BACKGROUND: Government Code, ch. 615 governs financial assistance to eligible survivors of certain state or local government employees who died as a result of injury sustained in the line of duty, including certain law enforcement officers, firefighters, and others. The law calls for the state to pay a lump sum of $500,000 per claim to an eligible surviving spouse, surviving children, or surviving parents, in that order.

DIGEST: HB 1526 would extend financial assistance to an eligible survivor of a peace officer employed by a private institution of higher education, including a private junior college, who died as a result of injury sustained in the line of duty.

The bill would take effect September 1, 2017, and would apply only to a death that occurred on or after that date.

SUPPORTERS SAY:

HB 1526 would close a gap in state law and allow eligible survivors of police officers employed by private colleges and universities to receive state death benefits. These officers are licensed by the Texas Commission on Law Enforcement, are vested with full law enforcement powers and responsibilities, and are subject to the same regulatory authority as officers who work for the state. Furthermore, these officers work for state-certified law enforcement agencies that are no different in authority, function, or responsibility than their public counterparts.

Police officers employed by private colleges and universities serve the public and encounter the same risk and dangers as any other peace officer. Through interagency agreements, campus police departments also have concurrent jurisdiction over surrounding areas and frequently are called to back up local law enforcement. If while responding to the same incident, both an officer employed by the state and an officer employed by a private institution were killed, under current law only the eligible survivors of the officer employed by the state would receive death benefits because neither the state nor an alternative fund would provide for the family of the officer employed by the private institution. By extending the same state death benefits to families of all police officers, HB 1526 would recognize that officers may differ in their places of employment but not in their duty to the public.

OPPONENTS SAY:

It would be a shift in policy, under HB 1526, to extend state benefits to employees of a private institution. Private institutions also are likely to have life insurance policies for their employees that could help provide for families of fallen police officers.

NOTES:

According to the Legislative Budget Board's fiscal note, no significant fiscal impact to the state is anticipated due to the unpredictability of events that might lead to the payment of additional benefits. The Employees Retirement System estimated that two additional deaths would be eligible for financial assistance in the five years following the bill’s implementation.

SUBJECT: Extending agricultural land valuations for deployed military members

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

WITNESSES: For — Roy Osborn; (*Registered, but did not testify*: Miranda Goodsheller, Texas Association of Business; Jim Baxa)

Against — None

BACKGROUND: Tax Code, sec. 23.52 provides that land used for agriculture may be appraised on the basis of its ability to create income from agricultural activities. This appraisal value may not exceed the market value of the land.

DIGEST: HB 777 would extend an agricultural valuation of land to land that no longer qualified for the valuation, provided that the landowner:

- was a military member deployed or stationed outside of Texas; and
- intended to use the land in a way that would qualify for the exemption within 180 days of the out-of-state deployment ending.

The landowner would be required to notify the appraisal district in writing of both of the above facts within 30 days of being deployed. A landowner who currently was deployed or stationed on military duty outside Texas could qualify for the extension by submitting notice to the appraisal district within 90 days of the effective date of the bill.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY:

HB 777 would help ensure that deployed military members who were unable to continue using land for agricultural purposes were not unexpectedly hit with a large tax bill. Under current law, some members of the armed forces can lose the agricultural valuation of their land when they are deployed if they cannot keep it in production or file the necessary paperwork with the appraisal district. This change of use triggers a rollback tax, which in some cases can force the owner to sell the land to cover the tax penalty. The bill would help such landowners avoid this outcome by extending the agricultural valuation until the owner was able again to manage the land.

The bill would apply to only a limited number of properties, so any increase in the administrative burden on appraisal districts would be minimal. Moreover, a small increase in administrative burden would be worthwhile to ensure that deployed members of the military did not unfairly lose their land's agricultural valuation. Members of the armed services who were stationed elsewhere for an extended period of time would be likely to sell the land when they moved, so it is unlikely that extensions under the bill would continue indefinitely.

OPPONENTS SAY:

While addressing an important issue, HB 777 could have a negative effect on tax rolls by effectively creating an indefinitely long reduction in appraised value. The bill would not impose limits on how long the extension could last, so landowners could move out of state permanently and receive the agricultural valuation as long as they stayed in the armed services and were stationed outside of Texas.

It could be difficult for appraisal districts to verify that a landowner still qualified for the extension. Either qualification would go unchecked or the appraisal district would have to contact the owner directly to obtain proof that the owner was still a member of the armed services and deployed or stationed outside the state. A verification like this could impose an administrative burden on the appraisal district.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill could reduce revenue to the Foundation School Fund to the extent that more property qualified for the agricultural valuation.

The companion bill, SB 175 by Nichols, was referred to the Senate Finance Committee on January 25.

SUBJECT: Allowing certain prostitution conviction set-asides, records expunged

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For —James Caruthers, CHILDREN AT RISK; Brenda Koegler, League of Women Voters of Texas; Bobbie Cohen, National Council of Jewish Women; Jeffrey Larson, Republican Liberty Caucus of Texas; Allen Place, Texas Criminal Defense Lawyers Association; Brittany Hopkins, Texas Criminal Justice Coalition; Allison Franklin; Julia Walsh); (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Jessica Anderson, Houston Police Department; Dennis Mark, Redeemed Ministries; Liz Boyce, Texas Association Against Sexual Assault; Yannis Banks, Texas NAACP; Jennifer Allmon, The Texas Catholic Conference of Bishops; Julie Wheeler, Travis County Commissioners Court; and six individuals)

Against — (*Registered, but did not testify*: Buddy Mills, Kelly Rowe, Ricky Scaman, and R Glenn Smith, Sheriffs' Association of Texas)

On — Floyd Goodwin and Skylor Hearn, Department of Public Safety; Kirsta Melton, Office of the Attorney General

DIGEST: HB 269 would establish a process for certain individuals convicted of prostitution solely as a victim of human trafficking or compelling prostitution to have their convictions set aside, as well as a process for expunging certain arrest records relating to the prostitution offense.

The bill would authorize courts to hear petitions requesting that an order of conviction be set aside if the court found that the person engaged in prostitution solely as a victim of human trafficking or compelling prostitution and that the set-aside was in the best interest of justice. Courts in which a defendant was convicted would have jurisdiction to hear these

requests for five years after a conviction.

The request to have a conviction set aside would have to allege facts to establish that the individual engaged in prostitution solely as a victim of the crimes of human trafficking, continuous human trafficking, or compelling prostitution. Those asking to have a conviction set aside also could give the court a federal, state, local, or tribal government document indicating that the person engaged in prostitution solely as a victim of human trafficking or compelling prostitution.

Court clerks would be required to promptly notify prosecutors of a request to set aside a conviction, and the prosecutor would have 20 days to file a response.

A court would be required to hold a hearing on the request to set aside a conviction if the court found reasonable grounds to believe the facts or if the individual had submitted a federal, state, local or tribal government document about the offense. The court could not dismiss a petition if the individual submitted such a government document. Courts would be required to dismiss petitions if they found there were not reasonable grounds to believe the alleged facts or if the person had filed a previous petition based on the same evidence. If a court holding a hearing found that a petitioner was indigent and needed an attorney, the court would be required to appoint one.

After ordering a hearing, a court could order discovery from the prosecutor or the individual submitting the request. Documents from federal, state, local, or tribal governments indicating that the prostitution was committed solely as a victim of human trafficking or compelling prostitution would create a presumption that an individual's claim was true.

The person requesting the set-aside and the prosecutor could appeal a court's findings. Court reporters would be required to record hearings and if the person requesting the set-aside was indigent, the hearing would be transcribed at the county's expense.

The bill would entitle those arrested for prostitution to have their arrest

records expunged if a court determined as part of the request to have a conviction set aside that the person engaged in prostitution solely as a victim of human trafficking or compelling prostitution.

In such an expunction order, courts could allow law enforcement agencies to retain records and files under certain circumstances. Information in arrest records or files, with personal information redacted, could be retained if the court found that law enforcement agencies needed access to evidence in the records or files to investigate human trafficking or compelling prostitution offenses.

HB 269 would take effect September 1, 2017. The bill would apply to petitions asking for a conviction set aside that were filed on or after the bill's effective date, regardless of when the offense occurred. It also would apply to requests to have records expunged filed on or after the bill's effective date, regardless of when the offense occurred.

SUPPORTERS SAY:

HB 269 would provide relief to victims of human trafficking who have been forced into prostitution by allowing them to request that their prostitution convictions be set aside and their records be expunged. This could help these victims begin to recover and rebuild their lives.

Having a prostitution conviction, even if solely due to being a victim of human trafficking, can result in serious and lasting consequences. A conviction can interfere with efforts to get a job, housing, or education, which can make it hard to break the cycle of offending. These hurdles can prevent trafficking victims with prostitution convictions from rebuilding their lives and reintegrating into society.

The coercive nature of trafficking and being compelled into prostitution and the profound trauma these victims experience make this bill necessary. It would set up an appropriate judicial procedure for these unique cases and would not infringe on the clemency process. Setting aside convictions already can occur under other circumstances.

HB 269 would establish a path to have a conviction set aside and records expunged along with strict criteria for these decisions and would place full discretion with a court. A petitioner would have to prove that he or she

engaged in prostitution solely as a victim of trafficking or compelling prostitution. Judges would retain discretion throughout the process, and prosecutors would have the right to respond to petitions and to appeal rulings.

While current law may be able to provide some relief under certain situations, in too many cases it is unworkable or unhelpful and does not address the wide range of circumstances of trafficking victims. In some cases, current options do not provide the clean start that these victims need and deserve. For example, a trafficking victim still under the control of the trafficker might not be willing to raise a defense to prosecution saying the victim was trafficked or may be in an area without a diversion court that specializes in prostitution offenses.

The bill would meet the needs of both law enforcement agencies and victims relating to expunged information. If courts found that agencies conducting certain investigations needed access to information in the records or files that would be expunged, the information could be retained, as long as the victims' personal information was redacted. Expunctions allow people to move forward with their lives, and this bill would help a particularly worthy group of victims do so.

OPPONENTS SAY:

The state should not create a new process that would allow cases up to five years old involving one type of offense to be re-opened and essentially undone. The process described by HB 269 would be more akin to clemency, a function of the executive branch rather than the judiciary.

While those convicted of prostitution who were victims of trafficking or forced into prostitution may deserve assistance and special consideration, current law already has ways to accomplish this goal. For example, it is a defense to prosecution for prostitution if the acts were due to being a victim of human trafficking or compelling prostitution. In addition, certain individuals placed on community supervision can have their probation terms reduced or terminated, and under some circumstances judges can set aside these verdicts or dismiss the case after allowing the probationer to withdraw a plea.

Another option could be deferred adjudication, in which a judge

postpones the determination of guilt while the defendant serves probation, which can result in the defendant being discharged and dismissed. Some jurisdictions have prostitution courts that can divert those accused of the offense from the criminal justice system. There also are several existing ways to request to have records sealed through orders of nondisclosure.

These current options are appropriate because they deal with a case either up front when it is before a court or while the defendant is involved in the judicial system; for example, when an individual is on probation. The procedure that would be established by the bill could occur years after these events and could effectively reopen a case and upend a conviction, even if handed down by a jury.

OTHER OPPONENTS SAY:

The provisions that would allow law enforcement agencies to retain records and files under certain circumstances are too limited. The bill would allow the retention if the records were needed to investigate human trafficking or compelling prostitution offenses, but they could be needed for investigation of other crimes, such as drug offenses.

NOTES:

A companion bill, SB 1165 by Garcia, was referred to the Senate Criminal Justice Committee on March 9.

SUBJECT: Requiring certain human traffickers to register as sex offenders

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Frank Dixon, Austin Police Department; Jason Sabo, Children at Risk; Arianna Smith, Combined Law Enforcement Associations of Texas (CLEAT); Rene Lara, Texas AFL-CIO; Mike Gomez, Texas Municipal Police Association; Thornton Medley, United Steelworkers District Council 13-1; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Melissa Holman, Office of the Attorney General)

BACKGROUND: Code of Criminal Procedure, art. 62 requires individuals convicted of certain sex offenses to register as sex offenders. Penal Code, sec. 20A.03 creates the offense of continuous trafficking of persons.

DIGEST: CSHB 491 would add continuous human trafficking involving the sexual exploitation of children or prostitution to the list of offenses that require an individual convicted of the offense to register for life as a sex offender.

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 491 would ensure that individuals convicted of continuous human sex trafficking were required to register as sex offenders. A person who commits a single act of sex trafficking already is required to register, and this bill would apply the same principle to an offender convicted of committing two or more acts of sex trafficking during a period of 30 days or more. The bill would correct an oversight in existing law, as the

consequences for serial trafficking should be greater, not lower, than for a single offense.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSHB 491 differs from the filed version by specifying that someone convicted under Penal Code, sec. 20A.03 for conduct partly or wholly involving sexual exploitation of a child or prostitution would be required to register as a sex offender.

A companion bill, SB 1433 by Uresti, was referred to the Senate Criminal Justice Committee on March 20.

SUBJECT: Abolishing the State Procurement Advisory Council

COMMITTEE: Government Transparency and Operation — favorable, without amendment

VOTE: 7 ayes — Elkins, Capriglione, Gonzales, Lucio, Shaheen, Tinderholt, Uresti

0 nays

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Bobby Pounds, Comptroller of Public Accounts)

BACKGROUND: In 2007, the 80th Legislature enacted HB 3560 by Swinford, which transferred state purchasing authority from the former Texas Building and Procurement Commission to the comptroller and established the Statewide Procurement Advisory Council to oversee procurement of contracts with an estimated value of $100,000 or more. Government Code, sec. 2155.086 requires that these contracts be awarded in an open meeting chaired by the chief clerk of the comptroller. The comptroller's office must post on its website a notice and the text of each contract awarded in a meeting. Sec. 2155.087 requires that a quorum of the Statewide Procurement Advisory Council attend each meeting and make recommendations to the chief clerk.

DIGEST: HB 1116 would abolish the Statewide Procurement Advisory Council and repeal provisions relating to procedures for awarding contracts with an estimated value of $100,000 or more.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: HB 1116 would help increase government efficiency by removing an unnecessary level of bureaucracy in the state procurement process. The

Statewide Procurement Advisory Council, which expired in 2011 but still is required under current statute to hold meetings, has outlived its utility. The council originally was created to review large contracts and ease any transparency concerns about transferring the procurement process from the seven-member Texas Building and Procurement Commission to a single elected official. However, the required meetings to award these contracts have lengthened the procurement cycle and added little transparency or guidance.

Abolishing the advisory council and removing its approval procedures would not impact public access to statewide records and contracts. The comptroller's office could maintain the same level of transparency through other contract posting requirements. Currently, agencies must post all contracts exceeding $25,000 in the Electronic State Business Daily and report certain contracts to the Legislative Budget Board database, both of which are accessible to the public.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The companion bill, SB 632 by Buckingham, was left pending in the Senate Business and Commerce Committee on April 11.

SUBJECT: Giving courts discretion over interest due on certain property tax refunds

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Y. Davis, Bohac, Darby, Murr, Raymond, Shine, Stephenson

0 nays

4 absent — D. Bonnen, E. Johnson, Murphy, Springer

WITNESSES: For — Mark Ciavaglia, Linebarger, Goggan, Blair and Sampson, LLP; (*Registered, but did not testify*: Robert Turner, Earth Moving Contractors Association of Texas; Roland Altinger, Harris County Appraisal District; Annie Spilman, National Federation of Independent Business/Texas; Daniel Gonzalez and Julia Parenteau, Texas Association of REALTORS; Brent South, Texas Association of Appraisal Districts; Jim Short, Linebarger law firm; Ro'Vin Garrett, Tax Assessor-Collectors Association of Texas; Marya Crigler, Travis Central Appraisal District; Bruce Elfant, James Popp)

Against — (*Registered, but did not testify*: R Clint Smith, Texas Association of Property Tax Professionals)

BACKGROUND: Tax Code, sec. 42.08 requires a taxpayer appealing the appraised valuation of property to pay a certain portion of the tax initially determined to be due. Taxpayers also are allowed to pay the full amount or make payments throughout the appeals process. If, pursuant to sec. 42.08, a taxpayer chooses to pay less than the total tax that was initially determined to be due, 42.42(c) provides that the remainder is considered delinquent if the taxpayer does not prevail. Delinquent tax bills are subject to a penalty of up to 12 percent under sec. 33.01.

Under sec. 42.43(b), if a taxpayer who has paid more tax than is due prevails on appeal, the taxing unit must provide a refund plus interest. HB 1090 by N. Gonzalez, enacted by the 82nd Legislature in 2011, set the interest rate at 2 percent plus the most recent prime rate published by the Federal Reserve. The 84th Legislature in 2015 enacted SB 1760 by

Creighton, which changed the rate to 9.5 percent.

DIGEST:

CSHB 2253 would change the Tax Code provision under which a taxpayer who has paid more tax than is due receives a refund plus interest after prevailing on appeal in a suit to reduce a property's appraised value. In this situation, the bill would give the court making the final determination of the appeal full discretion over the portion of the refund on which the 9.5 percent interest rate was assessed.

CSHB 2253 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply only to an appeal filed on or after that date.

SUPPORTERS SAY:

CSHB 2253 would allow courts flexibility in the amount of interest taxing units must pay on property tax refunds. This would fix a provision of law that currently allows some property taxpayers to profit unfairly from the system. A 9.5 percent interest rate on the full value of the refund can be excessive because it provides a better return than most investments. This may encourage taxpayers to pay their full tax bill up front and then contest the valuation, with the expectation that they could receive a solid return on investment without any risk. While interest rates on refunds are important, property tax refunds should not be treated as investments. Therefore, the amount of interest awarded should be at the discretion of the court.

This bill would resolve certain cases that impose hardships on taxing units, some of which risk of having to issue refunds that are larger than the actual property tax levied. This is especially difficult for rural taxing entities in which individual properties may make up a large percentage of the entity's revenue. CSHB 2253 would allow these entities to better budget their resources instead of planning for the possibility of an unaffordable property tax refund.

No inequality of risk exists between property owners and taxing units because taxpayers are allowed at any time during the appeals process to make payments on their outstanding tax bill with no penalty, reducing their risk profile. Appraisal districts have no corresponding option.

The judiciary can and should be trusted to determine the fair amount of interest paid in these cases. Interest payments compensate taxpayers for the temporary deprivation of funds, which is true in any case where a refund is due. Even though the bill would not mandate a minimum amount of interest due, there would be no practical scenario under which the court would require no interest to be paid. Therefore, appraisal districts would continue to have an incentive to settle lawsuits.

OPPONENTS SAY:

CSHB 2253 would increase the inequality that SB 1760 by Creighton tried to reduce. Because taxpayers must risk a 12 percent tax penalty when appealing valuations, the law also should impose a level of risk on taxing units, as equitably as possible. But CSHB 2253 probably would reduce the amount of interest that taxing units would be required to pay, reducing the equality of risk even further.

Additionally, CSHB 2253 would reduce the incentive to settle suits over appraised value, possibly prolonging litigation. Currently, the 9.5 percent interest rate on refunds creates a strong incentive to settle lawsuits, especially when the difference between the appraisal district's valuation and the taxpayer's valuation is high. As CSHB 2253 would eliminate the requirement for the taxing unit to pay any interest, leaving this determination to the court, it would reduce the incentive to reach a settlement.

NOTES:

CSHB 2253 differs from the filed bill in that the committee substitute would not set a minimum or a maximum portion of the refund on which a district court could assess the interest rate.

The companion bill, SB 1749 by Hinojosa, was referred to the Senate Finance Committee on March 23.